

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SUSAN WESTENBERG,	:	APPEAL NO. C-110835
	:	TRIAL NO. A-1009424
Plaintiff-Appellant,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
RONALD HALL,	:	
and	:	
JOYCE HALL,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Susan Westenberg appeals the judgment of the Hamilton County Court of Common Pleas denying her motion for partial summary judgment on her adverse-possession claims and granting defendants-appellees Ronald and Joyce Hall’s summary-judgment motion.

Westenberg obtained property located at 568 Anderson Ferry Road in Delhi Township (the “568 Property”) in October 2001 from Milton and Shirley Kleinholz by general warranty deed. The Kleinholzes had previously obtained the 568 Property from William and Helen Koch in 1961. When the Kochs sold the 568 Property to the

Kleinholzes, the Kochs retained ownership of the property across from the 568 Property at 566 Anderson Ferry Road (the “566 Property”). The Halls obtained the 566 Property in 1995 from William Koch, Jr., the son of the Kochs.

The deed to the 568 Property contains an express easement for ingress and egress. That easement contains a paved roadway and a strip of grass that runs parallel to the roadway (the “Strip”). Visually, the Strip appears to be part of the front yard of the 568 Property abutting the roadway, but the Strip is actually part of the 566 Property by deed.

Mr. Kleinholz averred that during the entire period of his ownership of the 568 Property, he had openly and exclusively maintained and improved the Strip, including installing a concrete drainage pipe. He averred that he had never asked permission to perform maintenance from the Kochs. William Koch, Sr., Helen Koch, and William Koch, Jr., are deceased.

In July 2010, Westenberg placed a wooden address post in the Strip, which the Halls cut down with a chainsaw in August 2010, claiming title ownership to the Strip. Westenberg then filed an amended complaint against the Halls for quiet title and declaratory judgment, alleging that Westenberg’s predecessors, the Kleinholzes, had obtained title to the Strip through adverse possession.

In her sole assignment of error, Westenberg argues that the trial court erred in denying her motion for partial summary judgment and entering judgment for the Halls on Westenberg’s amended complaint. We review a trial court’s decision to grant summary judgment under Civ.R. 56 de novo.

To succeed on a claim for adverse possession, a claimant must show, by clear and convincing evidence, exclusive possession that is open, notorious, continuous,

and adverse for 21 years. *Grace v. Koch*, 81 Ohio St.3d 577, 579, 692 N.E.2d 1009 (1998). In order to establish adversity, a claimant must intend to “possess and exercise control over a piece of property without the true owner’s permission[]” and give notice to the real owner of the extent of the adverse claim. *Evanich v. Bridge*, 119 Ohio St.3d 260, 2008-Ohio-3820, 893 N.E.2d 481, ¶ 8-12.

The trial court determined that no genuine issue of material fact existed with respect to adversity. Specifically, the trial court found that Westenberg had not taken any adverse action until she had placed the address post in the Strip, which the Halls had promptly removed. The trial court found that Mr. Kleinholz’s installation of a concrete pipe and general maintenance of the Strip had not been adverse to the record title owners of the Strip.

We agree with the trial court’s determination as to adversity. The grant of an easement to Kleinholzes by the Kochs included the grant of anything necessary and reasonable for the Kleinholzes’ use and enjoyment of the easement. *See Shikner v. Stewart*, 6th Dist. No. OT-09-015, 2010-Ohio-1478, ¶ 28. Mr. Kleinholz’s improvements and maintenance of the Strip, including installation of the concrete pipe to assist with drainage, had been consistent with his rights to use and enjoy the easement and did not exceed the scope of the easement. *See Mkt. Ent., Inc. v. Summerville*, 5th Dist. No. 2001CA00315, 2002-Ohio-3692, ¶ 11 (stating that a holder of a dominant estate may make repairs to the easement for further enjoyment of the easement).

Therefore, because Westenberg failed to set forth any evidence that she or the Kleinholzes had used the Strip in a manner adverse to the Halls or the Kochs for a 21-year period, no genuine issue of material fact exists as to Westenberg’s adverse-

possession claim, and summary judgment for the Halls was proper. We overrule Westenberg's assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on August 8, 2012
per order of the court _____.
Presiding Judge